

FORM 28: "Chilling Effect" Letter

EA-YY-XXX

(Name of Licensee)

(Address)

SUBJECT: ALLEGED DISCRIMINATION

Dear _____:

On _____, the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) in (name of city), received a complaint from a (former) employee of (name of employer) [if necessary, include: a (name of licensee) contractor at the (name of site) site]. The (former) employee alleged that [briefly state the nature of the discrimination, e.g., dismissal, denial of employment, reassignment, etc.] because he had raised safety concerns while performing his duties at (name of site). In response to that complaint, OSHA conducted an investigation, and in a letter dated _____, the Area Director of OSHA found that the evidence obtained during its investigation indicated that the employee was engaged in a protected activity within the scope of the Energy Reorganization Act and that discrimination as defined and prohibited by the statute was a factor in the actions which comprised his complaint. [or, In response to that complaint, OSHA secured an employee/employer conciliation.]

[Include either one of the following two paragraphs (not both). The first paragraph should be used when the NRC has collected some evidence to conclude that discrimination may have occurred.]

The NRC is concerned that a violation of the employee protection provisions set forth in 10 CFR (fill in the applicable regulation) may have occurred and that the actions taken against the (former) employee may have had a chilling effect on other licensee or contractor personnel.

While we recognize that (name of licensee) appears to have settled its differences with this individual, NRC must review this matter to determine whether a violation of 10 CFR (fill in applicable regulation) may have occurred. Such a violation, if it occurred, could have a chilling effect on other licensee or contractor personnel in that it might deter them from identifying any nuclear safety related concerns they may have.

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR (e.g., 50.54(f), 30.32(b), 40.31(b), 70.22(d), 110.52(b)), in order for the Commission to determine whether your license should be modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, you are required to provide this office, within 30 days of the date of this letter, a response in writing and under oath or affirmation that describes:

1. Your position regarding whether the actions affecting this individual violated 10 CFR 50.7 (or applicable requirement) and the basis for your position, including the results of any investigations you may have conducted to determine whether a violation occurred; and
2. Actions you have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within your organization and, as discussed in NRC Form 3, to the NRC.

We recognize that you may not believe that unlawful discrimination has occurred. Regardless of your answer to item 1 above, we request that you consider the need to address the *possible* chilling effect that an ongoing issue of this type may have on other employees.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the personal privacy-related information and a redacted copy of your response that deletes the personal privacy-related information. Identify the particular portions of the response in question which, if disclosed, would create an unwarranted invasion of personal privacy, identify the individual whose privacy would be invaded in each instance, describe the nature of the privacy invasion, and indicate why, considering the public interest in the matter, the invasion of privacy is unwarranted. If you request withholding on any other grounds, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

After reviewing your response, the NRC will determine whether enforcement action is necessary at this time to ensure compliance with regulatory requirements.

Sincerely,

Regional Administrator
(or designee)

Docket No. _____

License No. _____

cc: (TO BE DETERMINED BY THE REGION)

bcc:

Director, OE

Assistant General Counsel for Materials Litigation and Enforcement, OGC

Associate Director for Inspection & Programs, NRR [For NRR matters]

Director, NMSS [For NMSS matters]

Name of OSHA Area Director